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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,051	08/25/2003	Corrado Di Cecco	P08032US00/MP	1570

881 7590 01/25/2007  
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EXAMINER
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THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/25/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/647,051	Applicant(s) DI CECCO, CORRADO	
	Examiner Michael Thaler	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2006.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 3, 4, 10 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5-9 and 11-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/22/04</u> . | 6) <input type="checkbox"/> Other: _____  |

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Applicant's election with traverse of invention I and the species of figures 1-7 in the reply filed on Nov. 15, 2006 is acknowledged. The traversal is on the ground(s) that the apparatus, as claimed, cannot be used to clean a nasal cavity instead of an ear duct since claim 1 recites an "Ear duct cleaning device". This is not found persuasive because the device recited in claim 1 is not limited to the use of cleaning ear ducts and the term "Ear duct" in the phrase "Ear duct cleaning device" merely refers to the intended use of the device. Further, the device, as claimed, could be inserted into the nasal cavity to a position where the nasal cavity significantly changes in direction, for example, then inflated, then removed to clean the nasal cavity. Nothing is seen which would prevent such a use of the device. The requirement is still deemed proper and is therefore made FINAL.

Claims 3, 4, 10 and 20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on Nov. 15, 2006.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-9 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 5, lines 7-8, "the end turned toward the outside of said tubular member" is confusing and is not understood since the end portion of the tubular element is straight and is therefore not turned. Further, it is unclear exactly what member is turned. In claim 5, line 13, there is no antecedent basis for "the means of abutment". In claim 11, there is no antecedent basis for "the mouthpiece" (line 1) and "said tubular element" (lines 3-4).

Claims 1, 2, 11, 12 and 16-19 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nobles (2002/0128598). Nobles, in figure 8, discloses tubular member 34 (shown also in figure 1) which is flexible as indicated in [0048], inflatable element 32, means of supplying a fluid (e.g. the syringe described in [0041]), means 94 of controlling the inflation ([0055]) whereby the its radial extension of the balloon is considerably greater than that along the longitudinal axis ([0034]). The Nobles device is inherently capable of being used inside an ear duct,

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noting the dimensions described in [0054]. Alternatively, it would have been obvious that the Nobles device is capable of being used inside an ear duct because of its dimensions. Note also the last sentence of [0032]. As to claim 16, Nobles discloses two circular reference markings near the left end of figure 8. As to claim 19, note [0058].

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nobles (2002/0128598). As to claims 13 and 14, Nobles fails to disclose the specific structure of the syringe. However, it is old and well known in this art to use structure in order to obtain the advantage of insuring that the stem and piston are not inadvertently removed from the syringe. It would have been obvious to include such features in the Nobles syringe so that it too would have this advantage. As to claim 15, Nobles fails to disclose a pressure gauge. However, it is old and well known in this art to use a pressure gauge in order to obtain the advantage of enabling the monitoring of the pressure in the balloon. It would have been obvious to include a pressure gauge in the Nobles device so that it too would have this advantage.

Claims 5-9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in


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this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571) 272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

mht



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731